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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL AUGUST BARNETT,

Defendant and Appellant.

C079330

(Super. Ct. No. 13F334)

Defendant Gabriel August Barnett appeals from the trial court's order resentencing him pursuant to Penal Code section 1170.18.¹ He contends the trial court was not authorized to impose an upper term on a count for which a middle term was imposed at the original sentencing. We shall affirm.

¹ Undesignated statutory references are to the Penal Code.

BACKGROUND

We dispense with the facts of defendant's crimes as they are not necessary to resolve this appeal.

Following his conviction on felonies in four separate cases, defendant was sentenced to an eight-year state prison term consisting of a middle term of four years for possession of a controlled substance (Health & Saf. Code, § 11377) with a prior strike (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), two consecutive eight-month terms for two counts of second degree burglary (§ 459), a consecutive eight months for receiving a stolen vehicle (§ 496d, subd. (a)), and two consecutive one-year terms for two prior prison term enhancements (§ 667.5, subd. (b)).

Defendant subsequently filed section 1170.18 petitions seeking resentencing on all counts except the receiving conviction. The trial court granted the petitions, designated those crimes as misdemeanors, and resentenced defendant to an upper term of three years on the receiving count plus one year for a prison prior, for a total term of four years.

DISCUSSION

Proposition 47 made "certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) As relevant here, Proposition 47 enacted a resentencing provision, section 1170.18, under which, "a person 'currently serving' a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. [Citation.]" (*Rivera*, at p. 1092.) If a conviction qualifies for resentencing, "the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor," absent certain disqualifying factors not relevant here. (§ 1170.18, subd. (b).) "Under no circumstances may

resentencing under this section result in the imposition of a term longer than the original sentence.” (*Id.*, subd. (e).)

Defendant contends that section 1170.18 did not authorize the trial court to impose an upper term on the receiving count. Since his original term for this count was one-third the middle term, defendant claims the court did not have jurisdiction at resentencing to reevaluate him as an upper term candidate. We disagree.

“Section 1170.1, subdivision (a) creates an exception to the general rule that jurisdiction ceases when execution of sentence begins. ‘[W]hen a defendant is sentenced consecutively for multiple convictions, whether in the same proceeding or in different proceedings, the judgment or aggregate determinate term is to be viewed as interlocking pieces consisting of a principal term and one or more subordinate terms. (§ 1170.1, subd. (a).) Section 1170.1, with certain exceptions, also places certain restrictions on the sentencing judge’s discretion such as limiting the term of imprisonment for a subordinate term to no more than one-third the middle term of imprisonment for such conviction’ [Citation.]” (*People v. Sellner* (2015) 240 Cal.App.4th 699, 701 (*Sellner*)). Therefore, when resentencing a defendant in a section 1170.18 proceeding, a trial court’s jurisdiction extends to all components of the sentence, not merely those counts reduced to misdemeanors pursuant to the petition. (*Sellner*, at pp. 701-702.)

Sellner is consistent with the rules governing a trial court’s sentencing discretion on remand. “[U]nder principles already elucidated in the case law, the trial judge’s original sentencing choices did not constrain him or her from imposing any sentence permitted under the applicable statutes and rules on remand, subject only to the limitation that the aggregate prison term could not be increased.” (*People v. Burbine* (2003) 106 Cal.App.4th 1250, 1256; accord, *People v. Navarro* (2007) 40 Cal.4th 668, 681.) “When a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices. [Citations.] This rule is justified

because an aggregate prison term is not a series of separate independent terms, but one term made up of interdependent components.” (*People v. Hill* (1986) 185 Cal.App.3d 831, 834.)

We agree with *Sellner*. Section 1170.18 gives a court jurisdiction to resentence a defendant who has felony convictions that qualify for resentencing. The only limit it places on resentencing is that the trial court may not impose a greater term than the original sentence. It does not change the fact that a sentence is a single entity rather than a series of discrete sentences on individual counts and enhancements. We accordingly conclude that in a section 1170.18 proceeding, a trial court has the same authority to resentence the defendant as it would when one or more counts are reversed on appeal and the case remanded for resentencing.

The trial court was therefore free to exercise its discretion in resentencing defendant so long as the sentence was not greater than the original term. Since the four-year term it imposed is less than the eight-year term originally imposed, the trial court did not exceed the authority granted by section 1170.18.²

² We also reject the claim in defendant’s reply brief that the trial court did not state a reason for imposing the upper term. The court did state a reason for imposing the upper term on resentencing; that defendant agreed to a six-year four-month term in the plea agreement that disposed of three of his four cases, and imposing the upper term on the remaining felony count on resentencing was “as close as I can get to it.” Any claim that this reason was invalid or an improper exercise of the court’s sentencing discretion was forfeited by defendant’s failure to object at the resentencing hearing (*People v. Scott* (1994) 9 Cal.4th 331, 352-353) or to raise it in his opening brief on appeal (*People v. Whitney* (2005) 129 Cal.App.4th 1287, 1298).

DISPOSITION

The judgment (order) is affirmed.

RAYE, P. J.

We concur:

ROBIE, J.

MAURO, J.